

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

PHARAOHS GC, INC.

Plaintiff,

20-CV-665

v.

UNITED STATES SMALL BUSINESS
ADMINISTRATION,

ISABELLA CASILLAS GUZMAN, in her Official Capacity as
Administrator of the Small Business Administration,

UNITED STATES OF AMERICA,

JANET YELLEN, in her Official Capacity as
United States Secretary of Treasury,

Defendants.

SUPPLEMENTAL DECLARATION

MICHAEL S. CERRONE makes this Supplemental Declaration under penalties of perjury, pursuant to 28 U.S.C. § 1746:

1. I am an attorney duly licensed to practice in the State of New York and before this Court and am an Assistant United States Attorney in the Western District of New York.

2. I represent defendants (the “Government”) in this action brought by Plaintiff Pharaohs GC, Inc. (“Pharaohs”), an adult entertainment club located in Cheektowaga, New York.

3. This Supplemental Declaration is made in further support of the Government’s motion for summary judgment.¹

¹ Mills v. Luplow, No. 04-CV-0005, 2008 WL 4200599 at * 1 (W.D.N.Y. July 1, 2008) (holding that an attorney’s affidavit may be used to introduce documents on a motion) (citations omitted).

4. In its summary judgment motion filed on February 11, 2022 (Dkt. # 36), the Government argued, among other things, that Pharaohs' complaint must be dismissed because it was mooted by the February 25, 2021 felony indictment of its owner, Peter Gerace ("Gerace"). Dkt. # 36-3, pp. 19-21.

5. On June 8, 2023, Gerace was indicted again. Exhibit A.

6. Gerace has been charged on four counts of wire fraud in violation of 18 U.S.C. § 1343. Exh. A., p. 1.

7. Specifically, it is alleged that Gerace, on behalf of Pharaohs, submitted loan applications to and signed loan agreements with the U.S. Small Business Administration's ("SBA") Emergency Injury Disaster Loan ("EIDL") Program in which Pharaohs obtained up to \$2 million in loans from the SBA, and that Pharaohs obtained those loans only because Gerace made false certifications on the loan applications and loan agreements regarding the nature of Plaintiff's adult entertainment business and Gerace's own criminal history (his 2005 felony conviction for conspiracy to commit wire fraud and his February 25, 2021 felony indictment). Exh. A, pp. 5-9.

8. Wire fraud is a felony offense. See e.g., United States v. Bennett, No. 97 CR, 289-01 (RWS), 2000 WL 178185, at *1 (S.D.N.Y. Feb. 16, 2000).

9. Accordingly, for the reasons stated herein and in the Government's motion, Pharaohs' complaint must be dismissed on the grounds of mootness.

DATED: Buffalo, New York, June 20, 2023

s/MICHAEL S. CERRONE
Assistant U.S. Attorney